

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF INDIANA  
SOUTH BEND DIVISION

|                           |                                  |  |
|---------------------------|----------------------------------|--|
| LUIS MELENDEZ,            | ]                                |  |
|                           | ]                                |  |
| Petitioner                | )                                |  |
|                           | )                                |  |
| v.                        | ) CAUSE NO. 3:05-CV-699 RM       |  |
|                           | ) Arising from 3:04-CR-106(01)RM |  |
| UNITED STATES OF AMERICA, | ]                                |  |
|                           | ]                                |  |
| Respondent                | )                                |  |

OPINION AND ORDER

On October 21, 2005, Luis Melendez filed a petition pursuant to 28 U.S.C. § 2255, which the court denied based on Mr. Melendez's waiver in his plea agreement of his right to appeal and to file a habeas petition. Mr. Melendez has filed an appeal of that order, and while he hasn't requested that a certificate of appealability be issued, the court construes his notice of appeal as requesting such a certificate, as well.

Issuance of a certificate of appealability requires the court to find that Mr. Melendez has made "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). He has not done so. In his plea agreement, Mr. Melendez waived his right to file a petition under § 2255, and he hasn't alleged or advanced any claims relating to the negotiation of his plea agreement. See Jones v. United States, 167 F.3d 1142, 1145 (7th Cir. 1999) ("[T]he right to mount a collateral attack pursuant to § 2255 survives only with respect to those discrete claims which relate directly to the negotiation of the waiver."). Thus, to the extent Mr.

Melendez requests a certificate of appealability, such a request is DENIED [Doc. No. 42].

SO ORDERED.

ENTERED: January 4, 2006

/s/ Robert L. Miller, Jr.  
Chief Judge  
United States District Court